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CASE 1135

PATENT

GAU 3736

11-7-00

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FORREST L. COLLINS

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

DR. VERNON WEN-HAU LIN, M.D.

Serial No. <sup>9</sup>08/326,853

Filed: JUNE 7, 1999

Title: TREATMENT OF EXCRETORY PROBLEMS

Examiner: LACYK, J. P.

Art Unit: 3736

## RESPONSE A

Dear Sir:

Please enter the following amendment to the above-entitled application in response to the Official Action dated June 13, 2000. No new matter is presented.

### DISCUSSION OF THE DOUBLE PATENTING REJECTION

The Examiner has rejected claims 1 through 3 inclusive, 6, 11, 12, 14, and 15 for double patenting based on Serial Number 08/889,767. As the Examiner has not discussed the basis for the double patenting rejection, the applicant will discuss both types of double patenting rejections.

The first type of double patenting is "same invention double patenting". It is clear that the pending claims are not identical to those pending in Serial Number 08/889,767. Thus, there can be no basis for rejecting claims 1 through 3 inclusive, 6, 11, 12, 14, and 15 for double patenting based on Serial Number 08/889,767.

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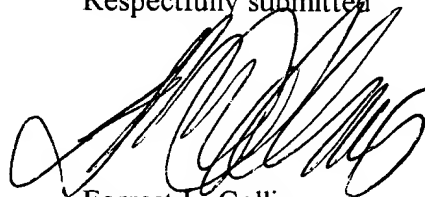
The Examiner has also failed to meet the burden of showing that the claims should be rejected as obviousness-type double patenting. The Examiner must do a detailed analysis of the claims in both applications to determine if there is obviousness type double patenting. In doing the detailed analysis of the claims in both applications the Examiner must follow the guidelines set out below.

First, the Examiner may not utilize the applicant's specification in determining whether or not the claims are obvious from one another for the purpose of an obviousness-type double patenting rejection. In this regard see In re Ruff and Dukeshire, 118 USPQ 340, 346 (CCPA 1958). Further, the Examiner's attention is directed to General Foods Corporation v. Studiengesellschaft Kohle GmbH, 23 USPQ 2d 1839 (CAFC 1992) regarding the foregoing. It is therefore improper to maintain that the applicant is improperly obtaining an extension of a patent because under the above-identified line of cases the Examiner has not met his burden. Thus, there can be no basis for rejecting claims 1 through 3 inclusive, 6, 11, 12, 14, and 15 for obviousness type double patenting based on Serial Number 08/889,767.

### CONCLUSION

Claims 1 through 3 inclusive, 6, 11, 12, 14, and 15 are pending in the application. An early Notice of Allowance is earnestly requested. Should the Examiner have any questions concerning this application they may be directed to the applicant's attorney at the number below.

Respectfully submitted



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